

# Senate Daily Reader

# Friday, February 14, 2003

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# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

544I0334

## SENATE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1072** - 02/11/2003

Introduced by: Representatives Madsen, Elliott, Gillespie, Hennies, Konold, Lintz, and Rave  
and Senators Duniphan, Abdallah, Duenwald, Kelly, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the operation of  
2 vehicles upon the approach of authorized emergency vehicles.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-31-6.1 be amended to read as follows:

5 32-31-6.1. Upon approaching from any direction any stopped authorized emergency vehicle  
6 making use of red visual signals meeting the requirements of this ~~chapter~~ title, the driver of every  
7 other vehicle shall come to a complete stop before ~~he reaches~~ reaching the stopped emergency  
8 vehicle and may, unless otherwise directed, proceed with caution only after ~~he has ascertained~~  
9 ascertaining that it is safe to do so, and upon approaching from any direction any stopped vehicle  
10 making use of amber or yellow warning lights, the driver of every other vehicle shall:

11 (1) If driving on an interstate highway or other highway with two or more lanes traveling  
12 in the same direction as the vehicle, merge into the lane farthest from the vehicle and  
13 proceed with caution, unless otherwise directed; or

14 (2) If driving on a two lane highway, slow to a speed that is at least twenty miles per hour  
15 less than the posted speed limit or five miles per hour when the speed limit is posted



- 1           at twenty miles per hour or less and proceed with caution, unless otherwise directed.
- 2       A violation of this section is a Class 2 misdemeanor.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

128I0246

HOUSE EDUCATION COMMITTEE ENGROSSED NO.

**HB 1077** - 01/30/2003

Introduced by: Representatives Buckingham, Adelstein, Cradduck, Elliott, Haverly, Hennies, Kroger, LaRue, Madsen, McCoy, McLaughlin, Murschel, Peterson (Jim), Rhoden, and Schafer and Senators Duniphan, Dempster, Earley, Koetzle, Napoli, Olson (Ed), Reedy, Sutton (Dan), and Symens

1 FOR AN ACT ENTITLED, An Act to repeal the limit on credit hours for certain students.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 13-28-37 be amended to read as follows:

4 13-28-37. Any student in grades ten, eleven and, or twelve ~~who is admitted~~ may apply to an  
5 institution of higher education or a postsecondary vocational education institution as a special  
6 student ~~may enroll in not more than two~~ in a course or courses ~~per fall or spring semester, which~~  
7 ~~are~~ offered at the institution of higher education or postsecondary vocational education  
8 institution. The student shall obtain the school district's approval of the postsecondary course or  
9 courses prior to enrolling ~~in the course~~. If approved, the student shall receive full credit toward  
10 high school graduation as well as postsecondary credit for ~~the~~ each postsecondary course. The  
11 resident school district may pay all or part of the tuition and fees for a course approved for credit  
12 toward high school graduation in accordance with this section. The student is responsible for any  
13 tuition and fees not paid by the resident school district and for any other costs involved with  
14 attending a postsecondary institution.



1        If a failing final course grade is received in a postsecondary course under this section, the  
2        student receiving the failure is no longer eligible to enroll for postsecondary courses under this  
3        section.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

769I0268

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB 1080** - 02/04/2003

Introduced by: Representatives Klaudt, Lintz, McCaulley, and Rhoden and Senators de Hueck, Duniphan, and Jaspers

1 FOR AN ACT ENTITLED, An Act to revise the publication of advertisements for bids.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 5-18-3 be amended to read as follows:

4 5-18-3. If the governing body of any public corporation intends to enter into a contract for  
5 the construction of a new building or the remodeling or addition to an existing building which  
6 involves the expenditure of fifty thousand dollars or more, a contract for any other public  
7 improvement which involves the expenditure of twenty-five thousand dollars or more, or a  
8 contract for the purchase of materials, supplies, or equipment which involves the expenditure of  
9 fifteen thousand dollars or more, the governing body of the public corporation shall advertise for  
10 bids for the project. The advertisement shall appear as a legal notice in the appointed legal  
11 newspaper. The advertisement shall be printed at least twice, with the first publication at least  
12 ten days before opening of bids. The first publication shall be in the official newspaper or  
13 newspapers of the contracting corporation, and the second publication may be in any legal  
14 newspaper of the state chosen by the contracting corporation. If the contracting corporation has  
15 no official newspaper, the first publication shall be made in a legal newspaper with general



1     circulation in the district, to be selected by the contracting corporation. The advertisement shall  
2     state the time and place where the bids will be opened and passed upon by the board. In all  
3     notices, the board shall reserve the right to reject any or all bids. If a public corporation lists a  
4     bid on the centralized bid exchange pursuant to § 5-18-1.1, the public corporation need not make  
5     the second publication required by this section.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

517I0453

## HOUSE ENGROSSED NO. **HB 1087** - 02/04/2003

Introduced by: Representatives Murschel, Bartling, Burg, Hargens, Heineman, Hunhoff, Klaudt, Madsen, McCoy, Miles, Nesselhuf, Peterson (Bill), Putnam, Smidt, Van Gerpen, and Van Norman and Senators Albers, Abdallah, Kloucek, Koetzle, McCracken, Moore, Reedy, and Symens

1 FOR AN ACT ENTITLED, An Act to revise the definition of qualified mental health  
2 professionals and to clarify when reimbursement is required for the services of qualified  
3 mental health professionals.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 27A-1-3 be amended to read as follows:

6 27A-1-3. As used in this title, the term, "qualified mental health professional", means a  
7 physician licensed pursuant to chapter 36-4 or a member of one of the professions listed in this  
8 section who has received a competency-based endorsement as a qualified mental health  
9 professional from the Department of Human Services. The following persons are eligible to apply  
10 for the endorsement:

- 11 (1) A psychologist who is licensed to practice psychology in South Dakota;
- 12 (2) A psychiatric nurse with a master's degree from an accredited education program and  
13 two years of supervised clinical experience in a mental health setting;
- 14 (3) A certified social worker with a master's degree from an accredited training program





1 and two years of supervised clinical experience in a mental health setting;

2 (4) A person who has a master's degree in psychology from an accredited program and  
3 two years of supervised clinical mental health experience and who meets the provision  
4 of subdivision 36-27A-2 (2); ~~or~~

5 (5) A counselor who is certified under chapter 36-32 as a licensed professional counselor  
6 -- mental health; or

7 (6) A therapist who is licensed under chapter 36-33 as a marriage and family therapist  
8 with two years of supervised clinical experience in a mental health setting.

9 Except as provided in § 36-4-20, each qualified mental health professional shall meet all  
10 licensing and certification requirements promulgated by the State of South Dakota for persons  
11 engaged in private practice of the same profession in South Dakota. However, the private  
12 practice licensure requirement for persons referred to in subdivision (4) does not apply to those  
13 employed by the State of South Dakota or mental health centers.

14 Section 2. That § 58-17-56 be amended to read as follows:

15 58-17-56. Notwithstanding any provision of any policy of insurance subject to the general  
16 provisions of this title, whenever such policy or contract provides for reimbursement for any  
17 service rendered by or directly supervised by a qualified mental health professional as defined in  
18 § 27A-1-3, which may be legally performed by a mental health center as defined by § 27A-1-1,  
19 reimbursement for coverage provided under such policy or contracts may not be denied.  
20 However, the provisions of this section only apply to the services defined in § 58-17-98.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

455I0254

## HOUSE ENGROSSED NO. **HB 1101** - 02/05/2003

Introduced by: Representatives Putnam, Bartling, Deadrick (Thomas), Hargens, Lintz, Olson (Ryan), Pederson (Gordon), and Van Gerpen and Senators Jaspers, de Hueck, Diedrich (Larry), Duxbury, Kloucek, Koskan, Nachtigal, and Symens

1 FOR AN ACT ENTITLED, An Act to revise the time period certain oversized motor vehicles  
2 may operate each day under a permit.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 32-22 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 If a commercial operator of a vehicle on which is mounted hay grinding equipment is issued  
7 an oversize permit pursuant to §§ 32-22-41 and 32-22-42, the operator may move the vehicle  
8 from November first to March thirty-first, inclusive, upon any public highway during any time  
9 of the day or night if the vehicle is operated within one hundred miles of the business location  
10 of the commercial operator. However, no operator may move hay grinding equipment on the  
11 interstate highway between one-half hour after sunset and one-half hour before sunrise on the  
12 following day. The vehicle or the load may not exceed twelve feet in width. If the vehicle is  
13 operated during the period of day between one-half hour after sunset and one-half hour before  
14 sunrise, the vehicle shall display flashing or rotating white or amber lights at each side of the  
15 vehicle's widest extremity. The warning lights shall be clearly visible to any motorist approaching



- 1 from the front or the rear. The annual fee for any oversized permit issued to a commercial
- 2 operator of a vehicle on which is mounted hay grinding equipment is fifty dollars.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

742I0550

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1117** - 02/12/2003

Introduced by: Representatives Michels, Adelstein, Cradduck, Cutler, Gillespie, Hunhoff, Kraus, LaRue, Madsen, Murschel, O'Brien, Olson (Mel), and Schafer and Senators Schoenbeck, Albers, de Hueck, Knudson, McCracken, Moore, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for the enforcement of foreign domestic violence  
2 protection orders.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 Any domestic violence protection order issued by a court of competent jurisdiction of  
7 another state, Indian tribe, the District of Columbia, or a commonwealth, territory, or possession  
8 of the United States is enforceable as if the order was issued by a court in this state if all of the  
9 following requirements are satisfied:

- 10 (1) The respondent received notice of the order in compliance with requirements of the  
11 issuing jurisdiction;
- 12 (2) The order is in effect in the issuing jurisdiction;
- 13 (3) The issuing court had jurisdiction over the parties and the subject matter;
- 14 (4) The respondent was afforded reasonable notice and opportunity to be heard sufficient



1 to protect that person's right to due process. In the case of ex parte orders, notice and  
2 opportunity to be heard must have been provided within the time required by the law  
3 of the issuing jurisdiction; and, in any event, within a reasonable time after the order  
4 was issued, sufficient to protect the respondent's due process rights;

5 (5) If the order also provides protection for the respondent, a petition, application, or  
6 other written pleading was filed with the issuing court seeking such an order and the  
7 issuing court made specific findings that the respondent was entitled to the order; and

8 (6) The prohibited conduct violative of the foreign protection order could be prohibited  
9 by a protection order if issued in this state.

10 Any protection order meeting the requirements of this section is a foreign domestic violence  
11 protection order.

12 Section 2. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 Any person entitled to protection under a foreign domestic violence protection order may  
15 file the foreign order in the office of any clerk of a circuit court in this state. The person filing  
16 the foreign order shall also file with the clerk of a circuit court an affidavit certifying the validity  
17 and status of the order and attesting to the person's belief that the order has not been amended,  
18 rescinded, or superseded by any orders from a court of competent jurisdiction. If a foreign order  
19 is filed under this section, the clerk of a circuit court shall enter the order in the law enforcement  
20 protection order database. Filing of a foreign order under this section is not a prerequisite to the  
21 order's enforcement in this state. No fee may be assessed for filing the foreign order.

22 Section 3. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
23 follows:

24 A law enforcement officer may rely upon any foreign domestic violence protection order that

1 has been provided to the officer by any source. The officer may make an arrest pursuant to § 25-  
2 10-13 for any violation of the foreign order in the same manner as for violation of a protection  
3 order issued in this state. A law enforcement officer may rely on the statement of the person  
4 protected by the foreign order that the order is in effect and that the respondent was personally  
5 served with a copy of the order. A law enforcement officer acting in good faith and without  
6 malice in enforcing a foreign order under this section is immune from civil or criminal liability  
7 for any action arising in connection with the enforcement of the foreign domestic violence  
8 protection order.

9 Section 4. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
10 follows:

11 Any person who intentionally provides a law enforcement officer with a copy of a foreign  
12 domestic violence protection order known by that person to be false, invalid, or not in  
13 compliance with the requirements of section 1 of this Act, or who, if served with such a  
14 protection order, denies having been served with the protection order, is guilty of a Class 1  
15 misdemeanor.

16 Section 5. That chapter 25-10 be amended by adding thereto a NEW SECTION to read as  
17 follows:

18 Failure to satisfy any of the requirements of section 1 of this Act is an affirmative defense to  
19 any prosecution for a violation of the foreign domestic violence protection order or any process  
20 filed seeking enforcement of the order in this state.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

490I0555

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **HB 1150** - 02/12/2003

Introduced by: Representatives O'Brien and Deadrick (Thomas) and Senators Diedrich (Larry), Brown, Knudson, and Sutton (Dan)

1 FOR AN ACT ENTITLED, An Act to provide for the amendment and cancellation of certain  
2 limited liability partnerships.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 48-7A be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 A statement of qualification of a limited liability partnership is amended by filing a statement  
7 of amendment in the Office of the Secretary of State. The statement of amendment shall set  
8 forth:

9 (1) The name of the limited liability partnership;

10 (2) The date of filing the statement of qualification of limited liability partnership; and

11 (3) The amendment to the statement of qualification.

12 Section 2. That chapter 48-7A be amended by adding thereto a NEW SECTION to read as  
13 follows:

14 A statement of qualification of limited liability partnership shall be cancelled upon the filing  
15 of a statement of cancellation of the limited liability partnership. The statement of cancellation



shall be filed in the Office of the Secretary of State and shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date of filing the statement of qualification of limited liability partnership; and
- (3) The reason for filing the statement of cancellation.

Section 3. That chapter 48-7A be amended by adding thereto a NEW SECTION to read as follows:

A statement of foreign qualification of a limited liability partnership is amended by filing a statement of amendment in the Office of the Secretary of State. The statement of amendment shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date of filing the statement of foreign qualification of limited liability partnership;  
and
- (3) The amendment to the statement of qualification.

Section 4. That chapter 48-7A be amended by adding thereto a NEW SECTION to read as follows:

A statement of foreign qualification of limited liability partnership shall be cancelled by filing a statement of cancellation. The statement of cancellation shall be filed in the Office of the Secretary of State and shall set forth:

- (1) The name of the limited liability partnership;
- (2) The date of filing the statement of foreign qualification of limited liability partnership;  
and
- (3) The reason for filing the statement of cancellation.

Section 5. That § 48-7A-1208 be amended to read as follows:

48-7A-1208. The provisions of § 1-8-10 notwithstanding, the fee for filing the statements



1 and reports provided for in the following sections with the secretary of state is as follows:

- 2 (1) Section 48-7A-303, Statement of Authority, ninety dollars;
- 3 (2) Section 48-7A-304, Statement of Denial, ten dollars;
- 4 (3) Section 48-7A-704, Statement of Dissociation, ten dollars;
- 5 (4) Section 48-7A-805, Statement of Dissolution, ten dollars;
- 6 (5) Section 48-7A-907, Statement of Merger, ten dollars;
- 7 (6) Section 48-7A-1001, Statement of Qualification, ninety dollars;
- 8 (7) Section 48-7A-1003, Annual Report, twenty-five dollars; ~~and~~
- 9 (8) Section 1 of this Act, Statement of Amendment, ten dollars;
- 10 (9) Section 2 of this Act, Statement of Cancellation, ten dollars;
- 11 (10) Section 48-7A-1102, Statement of Foreign Qualification, ninety dollars;
- 12 (11) Section 3 of this Act, Statement of Amendment, ten dollars; and
- 13 (12) Section 4 of this Act, Statement of Cancellation, ten dollars.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

715I0655

SENATE COMMERCE COMMITTEE ENGROSSED NO.

**SB 156** - 02/11/2003

Introduced by: Senators McCracken, Bogue, and Symens and Representatives Kraus,  
McLaughlin, and Miles

1 FOR AN ACT ENTITLED, An Act to revise certain provisions to provide workers'  
2 compensation benefits to children of deceased employees.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 62-4-12 be amended to read as follows:

5 62-4-12. The amount of compensation which shall be paid for an injury to the employee  
6 resulting in death, if the employee leaves a spouse, ~~child or~~ and any children, shall be paid at the  
7 rate provided by § 62-4-3 for life or until remarriage in the case of a spouse, ~~and in the event of~~  
8 ~~remarriage. If the spouse remarries,~~ two years' benefits shall be paid to the spouse in a lump sum;  
9 ~~and in the case of a child or.~~ The amount of compensation which shall be paid for an injury to  
10 the employee resulting in death, if the employee leaves any children and no spouse, shall be paid  
11 at the rate provided by § 62-4-3 until the child is age eighteen or for life in the case of ~~a~~ any child  
12 ~~or children who are~~ is physically or mentally incapable of ~~supporting themselves~~ self-support or  
13 until age twenty-two ~~if the~~ for any child ~~or children are~~ enrolled as a full-time student in any  
14 accredited educational institution. ~~If the child or children are~~ any child is not in the custody of  
15 the surviving spouse, the compensation shall be divided pursuant to the provisions of § ~~29-1-5~~



1 section 2 of this Act.

2 Section 2. That chapter 62-4 be amended by adding thereto a NEW SECTION to read as  
3 follows:

4 The amount of compensation which shall be paid for an injury to the employee resulting in  
5 death, if the employee leaves any child who is not in the custody of the surviving spouse, shall  
6 be paid at the rate provided by § 62-4-3, with half of the amount being paid to the surviving  
7 spouse. The other half shall be paid to the surviving child or in equal shares to the surviving  
8 children, until age eighteen, or for life in the case of a child who is physically or mentally  
9 incapable of self-support, or until age twenty-two for any child enrolled as a full-time student in  
10 any accredited educational institution. When a child is no longer eligible for benefits, his or her  
11 share shall be paid to the surviving spouse.

# State of South Dakota

SEVENTY-EIGHTH SESSION  
LEGISLATIVE ASSEMBLY, 2003

781I0577

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 179** - 02/12/2003

Introduced by: Senators Symens, Abdallah, Bogue, Duenwald, McCracken, and Moore and  
Representatives Hanson, Burg, Olson (Mel), and Peterson (Bill)

1 FOR AN ACT ENTITLED, An Act to revise and expand certain provisions relating to wind  
2 energy development.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-13-19 be amended to read as follows:

5 43-13-19. No interest in any resource located on a tract of land and associated with the  
6 production or potential production of energy from wind power on the tract of land may be  
7 severed from the surface estate as defined in § 45-5A-3, ~~except that~~ in fee, remainder, or  
8 permanent easement. However, such rights may be leased as a wind easement for a period not  
9 to exceed fifty years. Any such wind easement lease is void if no development of the potential  
10 to produce energy from wind power has occurred on the land within five years after the lease  
11 began. The payment of any such wind easement lease shall be on an annual basis.

12 Section 2. That § 43-13-18 be amended to read as follows:

13 43-13-18. Any deed, will, or other instrument that creates a wind easement shall include:

14 (1) A description of the real property subject to the easement and a description of the real  
15 property benefiting from the wind easement;



- 1       (2)    A description of the vertical and horizontal angles, expressed in degrees, and distances  
2            from the site of the wind power system in which an obstruction to the wind is  
3            prohibited or limited;
- 4       (3)    Any terms or conditions under which the easement is granted or may be terminated;
- 5       (4)    Any provisions for compensation of the owner of the real property benefiting from the  
6            easement in the event of interference with the enjoyment of the easement, or  
7            compensation of the owner of the real property subject to the easement for  
8            maintaining the easement; and
- 9       (5)    Any other provisions necessary or desirable to execute the instrument.

10       No instrument creating a wind easement may bind any of the parties to confidentiality  
11       concerning the terms of the easement. Any such confidentiality provision is void.

12       Section 3. That chapter 43-13 be amended by adding thereto a NEW SECTION to read as  
13       follows:

14       No wind power turbine may be erected within a distance to an adjoining property of less than  
15       three times the total swept rotorblade diameter of the installed turbine unless the adjoining  
16       landowner has consented in writing for compensation received.